

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**THOMAS ROSENBERG *et al.*, on behalf of  
themselves and classes of those similarly  
situated,**

**Plaintiffs,**

**v.**

**INTERNATIONAL BUSINESS  
MACHINES CORPORATION,**

**Defendant.**

**Case No. CV 06-00430 PJH  
MODIFIED**

**STIPULATION AND [PROPOSED]  
ORDER EXTENDING TOLLING OF  
FLSA STATUTE OF LIMITATIONS,  
TOLLING STATUTES OF  
LIMITATIONS FOR CERTAIN STATE  
LAW CLAIMS, AND EXTENDING  
SCHEDULE FOR FILING CERTAIN  
MOTIONS**

This Stipulation is entered into by and between Thomas Roseburg, James Baxter, Sherry Mattson, Steve Park, Fnu Kennedy, and Exaldo Topacio ("Plaintiffs"), by and through their undersigned counsel, and International Business Machines Corporation ("IBM" or the "Company"), by and through its undersigned counsel. Plaintiffs and the Company are collectively referred to herein as the "Parties."

**RECITALS**

WHEREAS, the Parties met with a mediator on Wednesday, September 13, 2006, in an attempt to resolve this litigation;

WHEREAS, the September 13, 2006 mediation session was constructive but did not

1 resolve the case;

2 WHEREAS, the Parties are in the process of exchanging additional information;

3 WHEREAS, the Parties have scheduled a second mediation session for October 19, 2006;

4 WHEREAS, the Parties would like to continue to attempt to resolve the case;

5 WHEREAS, for the reasons set forth above, good cause exists to postpone the filing of  
6 Plaintiffs' motion for Hoffman notice and IBM's motion(s) for summary judgment until  
7 November 21, 2006;

8 WHEREAS, the only other modifications of time that the Parties have sought in this case  
9 were a thirty-day stipulated extension of the deadline for IBM to respond to the Complaint and  
10 two stipulated continuances of the Case Management Conference;

11 WHEREAS, no other dates are affected by these changes;

12 WHEREAS, only to the extent specified below, this Stipulation and Order modifies (1)  
13 the Stipulation and Order Regarding Case Schedule, Tolling of FLSA Statute of Limitations, and  
14 Potential Collective Action Member Contact Information entered on June 7, 2006 and (2) the  
15 Civil Minutes order entered on August 17, 2006, both of which shall otherwise continue in full  
16 force and effect;

17 THEREFORE, the Parties stipulate and agree as follows:

18 **STIPULATION AND AGREEMENT**

19 1. Plaintiffs will not move for conditional certification of the prospective  
20 FLSA collective action for purpose of issuance of Court-facilitated notice or move to amend the  
21 Complaint to add additional state law claims before October 30, 2006, but shall file both motions  
22 by November 21, 2006, absent further order of the Court. Plaintiffs will not move for class  
23 certification under F.R.C.P. 23 before October 30, 2006, but shall file such motion by ~~the time to~~  
24 ~~be specified by the Court.~~ NOVEMBER 22, 2006. Same briefing /hrg schedule as par. 2.

25 2. Defendant will not move for summary judgment as to any plaintiff before  
26 October 30, 2006, but shall file any early motion for summary judgment (as specified in the Civil  
27 Minutes Order of August 17, 2006) by November <sup>22</sup>~~24~~, 2006, absent further order of the Court.  
28 Opposition due 12/6/06; Reply 12/13/06. Hearing date will be 1/10/07 at 9:00 a.m.

1                   3.       The statute of limitations under the FLSA applicable to (a) the Plaintiffs;  
2       (b) employees in bands 6-8 of the 499A Position; (c) employees in bands 6-8 of the 498Q, 498R,  
3       498S, 498T, and 498U Positions; (d) employees in the 5343 and 5338 Positions; and  
4       (e) employees in bands 6-8 of the 594J Position shall be tolled from April 19, 2006 through  
5       October 30, 2006.

6                   4.       The statute of limitations under the wage and hour laws of the states of  
7       Connecticut, Kentucky, Maryland, Massachusetts, North Carolina, Ohio, Pennsylvania,  
8       Washington, and Wisconsin applicable to the individuals set forth in paragraph 3 shall be tolled  
9       from the date on which this Stipulation and Order is filed by the Parties through October 30,  
10       2006.

11                  5.       This Stipulation and Order is without prejudice to Plaintiffs moving the  
12       Court, pursuant to the doctrine of equitable tolling, to toll the FLSA statute of limitations for  
13       periods before April 19, 2006 or after October 30, 2006. The Company reserves the right to  
14       oppose any such motion. This Stipulation and Order is also without prejudice to the Parties  
15       reaching agreement about additional tolling.

16                  6.       This Stipulation and Order will not have the effect of reviving (1) any  
17       FLSA claims that were time-barred as of April 19, 2006 or (2) any claims under the wage and  
18       hour laws of the states specified in paragraph 4 that were time-barred as of the date on which this  
19       Stipulation and Order is filed by the Parties.

20                  7.       Except as expressly set forth herein, nothing contained in this Stipulation  
21       and Order shall constitute a waiver of Plaintiffs' or the Company's legal positions, rights or  
22       remedies, including any defense under any statute of limitations or any other defense relating to  
23       the passage of time.

24                  8.       This Stipulation and Order shall not be admissible for any purpose  
25       whatsoever, other than for the purpose of enforcing the terms hereof, in any proceeding between  
26       the Company and any Plaintiff(s) and/or other individuals for whom a statute of limitations is  
27       tolled pursuant to this Stipulation and Order.  
28

1           9.       This Stipulation and Order is not intended as, and shall not be construed to  
2 be, an admission by any Party that any other Party has or does not have a valid claim or defense.

3           10.       This Stipulation and Order shall not become effective until approved and  
4 entered by the Court.

5 Dated: October 2, 2006

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*Attorneys for Plaintiffs and the proposed  
Plaintiff Classes*

**ORDER**

The foregoing Stipulation is approved, and ~~IT IS SO ORDERED.~~

DATED: 10/5/06

Hon. Phyllis J.  
United States

\*SEE DATE CHANGES.



1 I hereby attest that I have on file all holograph signatures for any signatures indicated by a  
2 “conformed” signature (/s/) within this e-filed document.

3  
4 Dated: October 2, 2006

\_\_\_\_\_  
/S/ Donna M. Mezas  
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